



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

OCT 28 2013

REPLY TO THE ATTENTION OF:

E-19J

Colonel Luke T. Leonard  
U.S. Army Corps of Engineers, Louisville District  
P.O. Box 59  
Attn: CELRL-PM-P-E  
Louisville, Kentucky 40201

**RE: Supplemental Final Environmental Impact Statement for Indianapolis North Flood  
Damage Reduction, Indianapolis, Marion County, IN; CEQ # 20130159**

Dear Colonel Leonard:

The U.S. Environmental Protection Agency has received and reviewed the U.S. Army Corps of Engineers' (USACE) Supplemental Final Environmental Impact Statement (SFEIS), dated June 2013, for proposed modifications to central Indianapolis flood damage reduction measures previously approved for implementation under USACE's 1996 Indianapolis North Flood Damage Reduction Study Environmental Impact Statement (1996 EIS). This letter provides our comments on the SFEIS, pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality's NEPA Implementing Regulations (40 CFR 1500-1508), and Section 309 of the Clean Air Act.

The 1996 EIS analyzed flood damage reduction measures to address flooding issues along the White River in central Indianapolis. Specifically, the project studied protection of residential and commercial properties along a three-mile stretch of the White River. The measures that were ultimately approved for implementation in the 1996 EIS and by the 1997 Record of Decision (1997 ROD) included a combination of earthen levees and constructed floodwalls to protect the Indianapolis communities of Monon-Broad Ripple, Warfleigh, and South Warfleigh. The Town of Rocky Ripple withdrew from the project during formulation of the 1996 EIS. As a result, USACE revisited the alignment for a portion of the project, known as the South Warfleigh section, and developed plans to relocate this segment of the project to the south and east of the Town of Rocky Ripple along the 19<sup>th</sup> Century Indianapolis Citizens Water Canal & Towpath (Canal).

The entire project alignment as previously approved was divided into three phases (Phase 3A, 3B, and 3C) due to funding constraints and real estate acquisitions. Phase 3A, the Warfleigh

section, consists of 7,600 linear feet of floodwall/levee on the existing Warfleigh levee; this section was completed in 2004. Phase 3B, the South Warfleigh Section, includes construction of floodwall and earthen levee along the east bank of the White River from Kessler Boulevard to termination on high ground at the downstream end of the project. The section of Phase 3B from Kessler Boulevard to and through the Riviera Club property was addressed in the 1996 EIS/1997 ROD<sup>1</sup>. Phase 3C, the Monon-Broad Ripple section, consists of 4,800 linear feet of floodwall/levee and was completed in 2009.

In early 2011, USACE prepared an Environmental Assessment (2011 EA) to evaluate existing conditions from 2010 and potential impacts associated with modifications to features approved in the 1996 EIS. As a result of the public interest, comments, and concerns received on the 2011 EA, USACE prepared a Supplemental Draft EIS (SDEIS) in lieu of finalizing the EA and preparing a Finding of No Significant Impact (FONSI).

The SDEIS and SFEIS were prepared to evaluate alternatives to and impacts from proposed modifications to project features, a proposed realignment of a portion of the South Warfleigh (3B) section<sup>2</sup>, and proposed additional tree clearing along completed portions of Section 3A and Section 3C. The updated SDEIS and SFEIS also noted the need for alternate mitigation sites and updated mitigation acreage from those described in the 1996 EIS.

Changes to the Phase 3B South Warfleigh section of the project proposed in the SDEIS were prompted by technical issues. USACE determined that the downstream end of the floodwall needed to be extended beyond the southern limits of the Riviera Club property and terminate at a higher existing ground elevation in order to provide a 300-year level of protection. The SDEIS evaluated five (5) build alternatives as well as a no-action alternative (which would continue the acceptance of the original plans as evaluated and approved in the 1996 EIS). The SDEIS also proposed tree clearing in completed Phase 3A and Phase 3C to meet current levee safety standards required for technical certification of the project by the Federal Emergency Management Agency (FEMA). Certification of the levee by FEMA is required for issuance of a Letter of Map Revision (LOMR) that modifies Flood Insurance Rate Maps through the National Flood Insurance Program. Certification, and subsequent flood map revisions, could result in reduction and/or elimination of flood insurance requirements or costs for property owners protected by the project.

As a result of a public meeting on the SDEIS and public comments received on the document, the SFEIS further refined the Phase 3B alternatives, and added a second Proposed Action, designated as the “56<sup>th</sup> Street Alternative – Illinois Street Variation.” The full Proposed Action of the SFEIS includes the following activities:

- Construction of the Westfield Boulevard Alternative for portions of the remaining section of the Phase 3B alignment;

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<sup>1</sup> This SDEIS and SFEIS studied proposed realignment for portions of Phase 3B south of the Riviera Club, in addition to other proposed modifications.

<sup>2</sup> The portion of Phase 3B from Kessler Boulevard south to and through the Riviera Club was addressed in the 1996 EIS. Its construction does not preclude implementation of the alternative alignments described in the SDEIS and SFEIS, which start at the lower (south) end of the Riviera Club property. These two sections comprise Section 3B.

- Construction of the (new) 56<sup>th</sup> Street Alternative – Illinois Street Variation for portions of the remaining of the Phase 3B alignment;
- Vegetation clearing out 15 feet from the toe of the existing levee and/or face of existing floodwall for Phase 3A/Warfleigh and Phase 3C/Monon-Broad Ripple sections of the project (previously constructed and currently existing); and
- Commitments to mitigate for removal of hardwood bottomland forest/riparian habitat to be destroyed due to vegetation clearing; ratios are described in the SFEIS.

EPA appreciates USACE's diligence in responding to public comments raised during the Draft EIS comment period and for responding to both written and oral comments in the Final EIS. The majority of comments raised by EPA in our SDEIS comment letter had a thorough response provided; however, some significant concerns remain.

EPA understands that specific design details and construction plans for the project are still forthcoming. We recommend that USACE address EPA's remaining concerns issues as project design and refinement progresses. EPA's comments on the SFEIS are as follows:

### **ENDANGERED/THREATENED/RARE SPECIES**

1. Page 58 of the SFEIS states that, "*The U.S. Fish and Wildlife Service [USFWS] commented in previous correspondence that the agency would not expect significant impacts to endangered species if the felling of trees greater than 3 inches DBH [diameter at breast height] was avoided from 1 April through 30 September. The Corps will abide by this restriction.*"

**Recommendation: EPA recommends that this commitment be specified in the forthcoming Record of Decision (ROD) for the project.**

2. USACE is required to coordinate water resource project proposals with the USFWS and the Indiana Department of Natural Resources (IDNR) under the Federal Fish and Wildlife Conservation Act (FWCA). Page 78 of the SFEIS states, "*Coordination was initiated at the onset of the project and continues with a request for their review and comment on the SFEIS.*"

**Recommendation: EPA recommends that any requirements from USFWS and/or IDNR regarding coordination under FWCA be specified in the forthcoming Record of Decision (ROD) for the project.**

### **ENVIRONMENTAL IMPACTS/MITIGATION**

1. Both the SFEIS and SDEIS stated that forest mitigation committed to in the 1997 ROD is no longer feasible and that changes to the environment and to the project scope will require more mitigation acreage than was initially planned. As such, (a) new environmental mitigation site(s) for impacts to mature bottomland forest must be developed. Neither the SFEIS nor the SDEIS contained specific information on forested mitigation proposals.

Section 8.0 of the SFEIS contained information that mitigation for proposed impacts to mature bottomland forest impacts associated with the Proposed Actions would be provided at a 3:1 ratio. Updated mitigation plans would also need to include the addition of the 14 acres of mature bottomland hardwood forest and 15 acres of emergent wetland (additional mitigation required/owed: 29 acres) required by the 1997 ROD that was never installed.

**Recommendation: The forthcoming ROD should commit to installation of forested bottomland hardwood mitigation at a 3:1 ratio for bottomland forest impacts associated with implementation of the Proposed Action. The ROD should also commit to installation of previously-required mitigation, including an additional 14 acres of mature bottomland hardwood forest mitigation and 15 acres of emergent wetland mitigation required by the 1997 ROD.**

## **ENVIRONMENTAL PERMITTING**

1. Page 52 of the SFEIS states that the proposed installation of riprap below the Ordinary High Water Mark (OHWM) of portions of the White River banks will trigger the need for IDEM Section 401 Water Quality Certification and compliance with Clean Water Act Section 404. **Recommendation: Placement of riprap below the OHWM of the White River will likely also require approval from IDNR and a modification of your previously-issued IDNR Construction in a Floodway Permit. EPA notes that IDNR's Environmental Review (ER-15583-1) comment letter on the SDEIS dated August 30, 2012, states, "The permit issued in 2001 (FW-19540) is currently out of compliance...Failure to bring this project into compliance may result in your file being forwarded to the Compliance and Enforcement Section of the Division of Water."** EPA recommends that USACE take measures to bring all existing permits into compliance before requesting modifications.

Additionally, other actions associated with the proposed project, including installation of water control gates within the Canal<sup>3</sup> and/or wetland filling associated with construction of Phase 3B, will trigger the need for IDEM Clean Water Act Section 401 Water Quality Certification and potentially for isolated wetland permitting as well.

## **WETLANDS AND FLOODPLAINS**

1. In EPA's September 27, 2012, SDEIS comment letter, EPA recommended that a formal wetland delineation (or field investigation by USACE regulatory staff) be undertaken to know definitively if wetlands (or other Waters of the US) are present within the project footprint. This recommendation was based on comments made by USFWS (in a U.S. Department of the Interior [USDOI] letter dated August 9, 2012), "*The National Wetland Inventory [NWI] maps depict part of the area between the existing levee and the river as wetland.*" Furthermore, the SFEIS states on page 41, "*While shown as a NWI wetland, site conditions did not indicate it was jurisdictional per existing Corps guidance. No other*

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<sup>3</sup> The Indianapolis Water Canal is considered a Water of the U.S./Water of the State, and the placement of any dredged or fill material into it triggers 404/401 permitting.

wetlands have been identified or reported within any of the other alternatives of the Phase 3B alignment.”

**Recommendation:** EPA reiterates that information provided by USACE in the SFEIS does not conclusively determine the presence (or absence) of regulated waters, including wetlands, within the project’s footprint. It would not appear that USACE has undertaken a wetland delineation as previously recommended by EPA. The statement in the SFEIS can be interpreted to read that a wetland is present within the project footprint, but is being dismissed by USACE as being non-jurisdictional (under Clean Water Act Section 404 permitting). Even if a wetland is not considered Federally jurisdictional under the Clean Water Act, Indiana has a state isolated wetlands law (Indiana Code 13-18-22 and 327 IAC 17) regulating isolated wetlands.

Again, EPA reiterates that a formal wetland delineation (or field investigation by USACE regulatory staff) should be completed in order to know definitively where wetlands (or other regulated Waters of the United States or Waters of the State) are located. Failure to determine if wetlands are present within the project footprint before construction may result in wetland violations subject to enforcement action by the Indiana Department of Environmental Management and/or the Indiana Department of Natural Resources.

## **HISTORIC PROPERTIES**

1. The SFEIS states that coordination with the Indiana State Historic Preservation Office (SHPO) is ongoing, particularly for review of the new 56<sup>th</sup> Street – Illinois Street Alternative proposed in the SFEIS. The SFEIS states on p. 63, *“A full assessment of the Illinois Street Variation and its affects to cultural resources and historic properties will be performed prior to the construction of the Proposed Action for the Phase 3B Alignment, including a field survey, analysis, and report of findings. All information will be provided to and coordinated with the City of Indianapolis, the IN SHPO, ACHP, and other consulting parties. No construction of the Phase 3B Alignment will commence until the [sic] after the conclusion of the consultation under Section 106 of the NHPA with either the signing of a MOA or a determination of ‘no adverse affect’ to historic properties.”*

**Recommendation:** EPA recommends that this commitment be specified in the forthcoming Record of Decision (ROD) for the project.

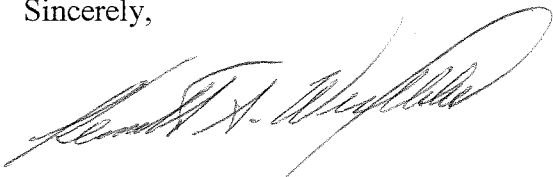
2. The SFEIS states on page 75 that the Westfield Boulevard portion of the Proposed Alternative, *“will have an adverse effect to a historic property determined eligible for the NRHP by the National Park Service’s Keeper of the Register: the Citizens Water Canal.”* It is not clear to EPA if the Proposed Alternative will have adverse impacts to the Hinkle Fieldhouse or the Butler University Historic District (which includes Holcomb Gardens). Page 64 of the SFEIS states, *“The Corps and the City of Indianapolis in consultation with the IN SHPO and other consulting parties will work toward avoiding any affects to the historic properties. Those determined to have an unavoidable adverse affect by the proposed undertaking will be resolved through the signing of a Section 106 Memorandum of Agreement. All documentation would be submitted to the Indiana SHPO, the National Park Service, the ACHP and other consulting parties for review, comment and execution, as*

*applicable. No construction of the Westfield Boulevard Alternative or its variations would commence until the [sic] after the conclusion of the consultation under Section 106 of the NHPA."*

**Recommendation: EPA recommends that this commitment from p.64 of the SFEIS be specified in the forthcoming Record of Decision (ROD) for the project.**

Thank you for the opportunity to review and comment on this Final Supplemental EIS. Please send us a signed copy of the Record of Decision once it is available. Please also submit a final signed copy of any Section 106 Memorandum of Agreement to this office. If you have any questions about this letter, please contact Ms. Liz Pelloso, PWS, of my staff at 312-886-7425, or via email at [pelloso.elizabeth@epa.gov](mailto:pelloso.elizabeth@epa.gov).

Sincerely,



Kenneth A. Westlake, Chief  
NEPA Implementation Section  
Office of Enforcement and Compliance Assurance

cc: Wm. Michael Turner, USACE-Louisville District  
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